

REMARKS/ARGUMENTS

In response to the Office Action dated March 31, 2010, Applicant requests reconsideration. Claims 1-23 are pending in this patent application and no claim is proposed to be added, cancelled, or even amended.

Claim 1 is only pending independent claim in this patent application. In the Office Action dated March 31, claims 1-23 were rejected as unpatentable over Justice (Published U.S. Patent Application 2001/0049630) in view of Bergs et al. (Published U.S. Patent Application 2005/017181, hereinafter Bergs). This rejection is respectfully traversed because it is legally unsound.

The present patent application was filed in the United States on October 22, 2003 without any foreign or domestic priority claim. Thus, the effective date of the present patent application, with respect to determining what publications may be prior art, is October 22, 2003.

Justice lists as its filing date June 26, 1998 so that Justice is, based upon its filing date, clearly prior art to the present patent application.

Bergs is a U.S. patent application filed in the United States on September 7, 2004 claiming a foreign priority of September 5, 2003. While Bergs can employ that foreign priority filing date under certain conditions, as the filing date of his U.S. patent application to fend off prior art, the effective date of Bergs, as a reference against other patent applications¹, is its U.S. filing date, namely September 7, 2004.

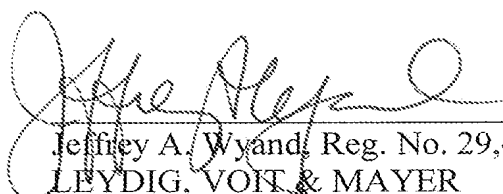
Since the effective date of Bergs is ten and one-half months *after* the effective date of the present patent application, Bergs cannot be prior art to the present patent application under any statutory section. Therefore, the rejection of claims 1-23 is legally deficient and must be withdrawn. For that reason, there is no necessity of

¹ Although not pertinent to the present Reply, the Bergs patent application was abandoned without the filing of any continuing patent application.

responding to the merits of the prior art rejection, no matter what the content may be of Bergs.²

Reconsideration, withdrawal of the rejection as legally insufficient, and issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,


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JAW:ves

² While there is no necessity of analyzing Bergs, at first glance it appears that the paragraph of Bergs cited in the Office Action would not be, if Bergs were prior art, sufficient to establish *prima facie* obviousness of any pending claim.